

# EXHIBIT A

### **Easoon Claim 5 – Breach of Fiduciary Duty**

Easoon's claim 5 alleges that Mr. Kelly has committed a breach of fiduciary duty owed to Easoon.

Fiduciary duties are owed by those in confidential relationships. A relationship is deemed confidential, whether arising from nature, created by law, or resulting from contracts, where one party is so situated as to exercise a controlling over the will, conduct, and interest of another or where, from a similar relationship of mutual confidence, the law requires the utmost good faith, such as the relationship between partners, principal and agent, etc.

To prevail on this claim, Easoon must prove each of the following propositions by a preponderance of the evidence:

1. Mr. Kelly owed a fiduciary duty to Easoon.
2. Mr. Kelly breached that duty.
3. Mr. Kelly's breach of the fiduciary duty proximately caused harm to Easoon.

The question has been raised whether at the relevant time, Mr. Kelly was an agent of Easoon or was an independent contractor. An "agent" is a person who, by agreement with another called the principal, represents the principal in dealings with third persons or transacts business, manages some affair, or does some professional service for the principal. An "independent contractor" is a person who undertakes a specific job and is not an employee. The law allows for an independent contractor to be an agent of a company, if the independent contractor has the authority, real or ostensible, to create obligations on behalf of the principal, bringing third parties into contractual relations with the principal.

Authority: *Automated Sols. Enters., Inc. v. Clearview Software, Inc.*, 255 Ga. App. 884, 888, 567 S.E.2d 335, 338 (2002); *Gilmore v. Bell*, 223 Ga. App. 513, 514, 478 S.E.2d 609, 611 (1996); *N.Y. Life Ins. Co. v. Grant*, 2016 U.S. Dist. LEXIS 39960 (2016); *Nash v. Studdard*, 294 Ga. App. 845, 849-850 (2) (670 SE2d 508) (2008); O.C.G.A. § 23-2-58

**Easoon Claim 6 – Aiding and Abetting Breach of Fiduciary Duty**

Easoon's Claim 6 alleges that MOSO aided and abetted Mr. Kelly in committing a breach of his fiduciary duty to Easoon.

To prevail on this claim, Easoon must prove each of the following propositions by a preponderance of the evidence:

1. Mr. Kelly breached a fiduciary duty to Easoon, as set out in the instruction describing Easoon's Claim 5.
2. MOSO knowingly participated in Mr. Kelly's breach.
3. Mr. Kelly's breach of his duty of fiduciary caused harm to Easoon